WASHINGTON HOME FOR INCURABLES *v.* AMERICAN SECURITY AND TRUST COMPANY.

VERMILLION *v.* BALTIMORE AND OHIO RAILROAD COMPANY.

APPLICATIONS FOR THE ALLOWANCE OF AN APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA, AND FOR A WRIT OF ERROR TO THE SAME.

Submitted April 15, 1912.—Decided April 29, 1912.

Section 299 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, saving suits pending on appeal, does not give the right of appeal from judgments of the Court of Appeals of the District of Columbia in cases covered by the statutes repealed by the Judicial Code and in which the cause of action accrued prior to January 1, 1912, but which were not decided by the Court of Appeals until after that date.

Appeal from 40 Washington Law Reporter, 146, denied.

Writ of error to review 40 Washington Law Reporter, 228, denied.

THE facts, which involve the construction of the provisions of the Judicial Code of March 3, 1911, in regard to appeals to this court from the Court of Appeals of the District of Columbia, are stated in the opinion.

Mr. Henry B. F. Macfarland, Mr. Charles Cowles Tucker and *Mr. J. Miller Kenyon* for petitioner The Washington Home for Incurables:

The saving clause of the Judicial Code, § 299, clearly preserves the right of appeal in this case. Its language would have to be wrested from its evident meaning to bar the appeal.

Giving to the language of § 299 the consideration warranted by the familiar canons of construction of statutes will show that the intention, and the action of Congress,

contemplated the continuance of the right of appeal in this cause.

For the canons of construction of statutes, or decisions respecting them, see summary, 1 Fed. Stat., Ann., pp. VIII to CXXX, on statutes and statutory construction.

In the light of reason an examination of the Judicial Code as affected by § 299 shows that it cannot bar appeals covered by the saving clause as in this case.

If, as may be claimed, the intention of Congress was simply to preserve the jurisdiction of the Supreme Court over writs of error and appeals in cases actually pending on the first day of January, 1912, in the Supreme Court of the United States itself, and not in any appellate or other court below, Congress could and would have said so in a very few words.

If Congress meant to preserve only appeals pending in the Supreme Court it should and would have said so, as in former acts, in explicit terms. For other instances, see Act of March 3, 1873, 17 Stat. 485, c. 223; Act of March 3, 1891, 26 Stat. 1115; Act of January 20, 1897, 29 Stat. 492.

Section 299 is unnecessary for any other purpose than that suggested in this case.

In cutting off a privilege of appeal enjoyed by the National Capital for more than a century, Congress gave days of grace at least as to pending cases.

Mr. Joseph W. Cox and *Mr. John A. Kratz, Jr.*, for petitioner Vermillion:

The plain words of § 299 expressly saves the jurisdiction which this court had under the act of February 9, 1893, 27 Stat. 436.

The section is very comprehensive, and provides that the appeal of existing laws shall not affect: (a) any act done, or any right accruing or accrued; (b) any suit or proceeding pending at the time of the taking effect of this act; (c) any suit or proceeding pending on writ of

error, appeal certificate, or writ of certiorari in any appellate court referred to or included within the provisions of the act at the time of its taking effect.

The act further provides that, "all such suits and proceedings and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made."

The meaning plainly to be deduced from a reading of this section is that Congress was leaving unaffected proceedings under the repealed laws in pending cases, and also proceedings in causes arising, or acts done prior to such date. The words of this section are not ambiguous, but leave the intent of Congress plain, and this court has decided that under such circumstances it will not give construction to an act of Congress. *Dewey* v. *United States*, 178 U. S. 510; *United States* v. *Union P. R. R. Co.*, 91 U. S. 72.

While one of the effects of § 299 is to accomplish just what the Court of Appeals declares it does, the section is far more comprehensive in its effective operation than that ascribed to it by that court.

Congress used the words of this section in their plain and natural meaning, as is clearly shown by the legislative history of the section and its comparison with §§ 5597 and 5599, Rev. Stat. of 1873, from which its language was taken. See the bill as originally reported to the Senate, S. 7031 and to the House, H. R. 23,377; Sen. Report, 388, 61st Cong., 2d Sess. of Special Joint Committee on Revision and Codification of the Laws of the United States.

Where Congress in a subsequent act adopts the provisions of a former act and in the main its language, it must be presumed that Congress intended the provisions of the subsequent law to accomplish the same thing and to have the same force and effect as the earlier law. Es-

pecially is this so where the courts have construed the earlier law, before the enactment of the subsequent law, to be in harmony with the plain meaning of the words employed. *Bechtel* v. *United States*, 101 U. S. 597; *May* v. *County of Logan*, 30 Fed. Rep. 250.

The plain words of the section, its legislative history, and this court's construction of prior laws *in pari materia* all show that the intention of Congress was to save this court's jurisdiction in a case like that at bar.

MR. JUSTICE HOLMES delivered the opinion of the court.

These are applications for the allowance of an appeal and writ of error, respectively. The cases come before the court under the same circumstances as the application for a writ of error just decided. *American Security & Trust Co.* v. *District of Columbia*, *post*, p. 491.

The first named is a bill in equity that was pending in the Court of Appeals on January 1, 1912, and decided on March 4, 1912. The matter in dispute in both, exclusive of costs, exceeds the sum of five thousand dollars. The law before the enactment of the Judicial Code of March 3, 1911, c. 231, 36 Stat. 1087, allowed a writ of error or appeal in such cases, act of February 9, 1893, c. 74, § 8, 27 Stat. 434, 436, and the applicants contend that the appeal and writ of error are rights saved by § 299 of the Code. That section is as follows: "The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within

the same time, and with the same effect, as if said repeal or amendments had not been made." This act took effect when this suit was pending in the Court of Appeals, on January 1, 1912.

The purpose of the act in the matter of appeals from the Court of Appeals of the District was to make a substantial change and to do away with them except in classes of cases of which this is not one. There seems to be little if any more reason for preserving a further appeal in cases then before the Court of Appeals than there is in those in which no writ had been sued out, but the cause of action had accrued before January 1, 1912, which is nothing at all. It must appear clearly, therefore, that this case is saved or it will fall under the general rule. We find no clear expression of such intent. The general provision that the repeal shall not affect any right or suit, is ambiguous and is qualified and explained by the words 'including those pending on appeal,' etc., which suggest that but for them appeals already taken would have fallen. *Baltimore & Potomac R. R. Co.* v. *Grant*, 98 U. S. 398. If express words were thought necessary to save pending appeals, *a fortiori* such words were needed to save appeals not yet taken, and no such words were used. The first part of the section, declaring what shall not happen, is elucidated by the antithetical statement, in the last part, of what shall take place. We gather from that that all suits upon causes of action that arose before January 1 stand alike. We cannot suppose that a suit not yet begun can be taken to this court on the ground that a sum of more than $5,000 is involved, and we are of opinion that the applicant makes no better case. We agree with the Court of Appeals that the act saves jurisdiction when an appeal has been taken, but does not save an appeal for all suits in causes of action accrued before this year.

Leave to appeal and writ of error denied.

AMERICAN SECURITY AND TRUST COMPANY *v.* COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

PETITION FOR A WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Submitted April 15, 1912.—Decided April 29, 1912.

The jurisdiction of this court to reëxamine final judgments or decrees of the Court of Appeals of the District of Columbia under § 250 of the Judicial Code of March 3, 1911, 36 Stat. 1087, c. 231, in cases in which the construction of a law of the United States is drawn in question, does not extend to cases where the act of Congress construed by that court is a purely local law relating to the District of Columbia, but only extends to those having a general application throughout the United States.

In construing a statute the same phrase may have different meanings when used in different connections.

Section 250 of the Judicial Code should be strictly construed, as the intent of Congress was to relieve this court from indiscriminate appeals where the amount involved exceeded $5,000.

All cases in the District of Columbia arise under acts of Congress; and to so construe § 250 of the Judicial Code as to include the case at bar, because the construction of a local street extension act was involved, would largely and irrationally increase the appellate jurisdiction and the statute will not be construed so as to include such cases even if within its literal meaning. *Holy Trinity Church* v. *United States*, 143 U. S. 437.

Writ of error to review 40 Washington Law Reporter, 34, denied.

THE facts, which involve the construction of the provisions of the Judicial Code of March 3, 1911, in regard to appeals to this court from the Court of Appeals of the District of Columbia, are stated in the opinion.

Mr. Wm. G. Johnson for petitioner:

The jurisdiction of this court to review the judgment of the Court of Appeals is based upon § 250, Judicial Code, providing that any final judgment or decree of the Court

of Appeals of the District of Columbia may be reëxamined and affirmed, reversed, or modified by this court upon writ of error or appeal, when the construction of any law of the United States is drawn in question by the defendant.

Upon this provision of the statute but two questions can arise affecting the jurisdiction of this court; namely, (1) was the construction of the above-recited statutes drawn in question by the defendant, and (2) are those statutes within the descriptive words "any law of the United States," as those words are used in § 250 of the Judicial Code.

In this case the construction of the statutes was drawn in question by the defendants.

The statute is, itself, an instruction to the jury, and the instruction objected to by defendants and the one asked by defendants, of necessity, drew in question the construction of the statute.

The words "any law of the United States" embrace the statutes, the construction of which was drawn in question in this case.

The two acts of Congress, the construction of which was drawn in question in this case, are laws of the United States. Every legislative act of the Congress, whether local or general, is a law of the United States, and is so defined in the Constitution.

While it is freely conceded that the word "any" like other words, may have a greater or less extensiveness, according to the intent with which it is used, still, in general, it embraces each and every object in the class to which it is applied. *United States* v. *Palmer*, 3 Wheat. 610; *Collector* v. *Hubbard*, 12 Wall. 1.

Uniformity of statutory construction is not the object or effect of the statute.

The appellate jurisdiction conferred upon this court by clause 6 of § 250, novel in the legislation of Congress on the subject of appellate jurisdiction, and extending to but

one court in the entire judicial system of the Nation, cannot, by any possibility, even tend to produce uniformity of decisions as to the construction of laws of the United States of national application. Being wholly unadapted and incompetent to produce uniformity of decision, the clause in question cannot properly be said to have been framed with that object, in the absence of any such declared purpose in the statute, and the inference, that the clause should be confined to general statutes of the United States as distinguished from those of purely local application, based, as it is, upon that supposed purpose of the legislature, is without foundation. See *Parsons* v. *Dist. of Col.*, 170 U. S. 45; *Balt. & Pot. R. R.* v. *Hopkins*, 130 U. S. 210.

Nor is the relief of this court involved; whether this was the intention of the act admits of serious question. No such purpose is declared in the statute and it is not to be inferred from provisions expressly conferring additional appellate jurisdiction upon this court.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an application for a writ of error to the Court of Appeals of the District of Columbia under the new Judicial Code. Act of March 3, 1911, c. 231. 36 Stat. 1087. The Court of Appeals denied the writ. Thereupon application was made to the Chief Justice. He referred it to the court. Briefs were called for and one was submitted by the applicants. It now is to be decided whether the writ should be allowed.

By § 250 of the Code any final judgment or decree of the Court of Appeals may be reëxamined 'in the following cases: . . . Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.' This is the clause relied upon. The case was a suit for the condemnation of land brought by the Commissioners under a special act of

February 6, 1909, c. 75, 35 Stat. 597, for the extension of New York Avenue. By that act the procedure was to follow subchapter one of chapter fifteen of the District Code, which provides among other things for the separate assessment of benefits. Act of March 3, 1901, c. 854. 31 Stat. 1189, 1266. The jury were instructed that by the extension of the avenue they were to understand its establishment, laying out and completion for all the ordinary uses of a public thoroughfare. The applicants contended that, as there was no present provision for grading, paving, laying water mains or sewers, or otherwise opening the avenue to traffic, any advantage that would accrue from such improvements if made must be disregarded; and so they say that they drew the construction of the special act and perhaps of the Code in question, and that these were laws of the United States.

We do not stop to consider whether any question of construction properly can be said to have been raised, rather than a question of general law in the application of words that were colorless so far as the point in controversy was concerned. It might not be just to assume that the general averment of the application was not justified by exceptions more clearly turning on the construction of the local laws than the example given in the brief. The ground on which the writ was refused by the Court of Appeals was that the words quoted from § 250 should not be construed to apply to the purely local laws of the District, and with that view we agree.

Of course there is no doubt that the special act of Congress was in one sense a law of the United States. It well may be that it would fall within the meaning of the same words in the third clause of the same section: 'Cases involving the constitutionality of any law of the United States.' *Parsons* v. *District of Columbia*, 170 U. S. 45. But it needs no authority to show that the same phrase may have different meanings in different connections.

Some reasons for strict construction apply here. We are entirely convinced that Congress intended to effect a substantial relief to this court from indiscriminate appeals where a sum above $5,000 was involved, and to that end repealed the former act. See *Carey* v. *Houston & Texas Central Ry. Co.*, 150 U. S. 170, 179. *Cochran* v. *Montgomery County*, 199 U. S. 260, 272, 273. But all cases in the District arise under acts of Congress and probably it would require little ingenuity to raise a question of construction in almost any one of them. If, then, the words have the meaning given them by the applicants the appellate jurisdiction of this court has been largely and irrationally increased. We believe Congress meant no such result.

A well-known example of construing a statute not to include a case that indisputably was within its literal meaning, but was believed not to be within the aim of Congress, is *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; we may refer further to *Cochran* v. *Montgomery County, ubi supra*. In the case at bar if the words 'construction of any law of the United States' are confined to the construction of laws having general application throughout the United States the jurisdiction given to this court by § 250 is confined to what naturally and properly belongs to it. If they are construed the other way it would have been less arbitrary to provide that every question of law could be taken up. That they were not to be understood as the applicant contends is to be inferred not only from the sense of the thing but from clause first: 'In cases where the jurisdiction of the trial court is in issue,' with provision for certifying that question alone. It is difficult to imagine a case in which the jurisdiction of the trial court is in issue where the construction of a special law of the United States would not be drawn in question.

Writ of error denied.